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	SP-00	IRM-00	STR-00	TRSE-00	USIE-00	PMB-00	DSCC-00
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FM AMEMBASSY HARARE
TO SECSTATE WASHDC PRIORITY 7916
INFO NSC WASHDC PRIORITY
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
AMEMBASSY NAIROBI

C O N F I D E N T I A L HARARE 007285

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR GAYLE SMITH

LONDON FOR CHARLES GURNEY

PARIS FOR BISA WILLIAMS

NAIROBI FOR TERRY PFLAUMER

PASS USTR FOR ROSA WHITAKER

E.O. 12958: DECL: 12/29/10
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TAGS: PHUM PGOV ZI
SUBJECT: ZIMBABWE PRESIDENT DILUTES INDEPENDENCE OF HIGH
COURT WITH NEW APPOINTMENTS

CLASSIFIED BY CHARGE D'AFFAIRES EARL M. IRVING FOR
REASONS: 1.5 (B) AND (D).

1. (U) ON DECEMBER 21, PRESIDENT MUGABE EXPANDED THE ZIMBABWE HIGH COURT BY SWEARING IN FOUR NEW JUSTICES. THREE OF THE NEW JUSTICES HAVE CLEAR TIES TO THE RULING ZANU-PF. RITA MAKARAU IS A FORMER NON-CONSTITUENCY MP APPOINTED BY MUGABE AND SERVED IN THE LAST PARLIAMENT. SHE WAS ALSO APPOINTED TO SERVE ON THE GOVERNMENT'S CONSTITUTIONAL COMMISSION, WHICH LAST YEAR HIJACKED THE BROAD-BASED NATIONAL CONSTITUTIONAL ASSEMBLY'S EFFORT TO WRITE A NEW CONSTITUTION. CHARLES HUNGWE WAS THE FIRST CHAIRMAN OF THE ZIMBABWE NATIONAL LIBERATION WAR VETERANS' ASSOCIATION FROM 1992 TO 1995, AND WAS A SENIOR MAGISTRATE BEFORE HIS HIGH COURT APPOINTMENT. HE IS CURRENTLY A MEMBER OF THE ELECTORAL SUPERVISORY COMMISSION, AND IS EXPECTED TO RESIGN FROM THAT POST TO TAKE UP HIS NEW POSITION. BEN HLATSHWAYO, ALSO A MEMBER OF THE NOW-DEFUNCT CONSTITUTIONAL COMMISSION, HAS BEEN A STAUNCH CRITIC OF THE NCA, AND HE IS CURRENTLY AN EDITORIAL ADVISOR TO THE PRO-ZANU-PF "ZIMBABWE MIRROR." ANNE-MARIE GOWORA COMES FROM A PRIVATE LAW FIRM, AND ONCE WORKED FOR THE ATTORNEY-GENERAL'S OFFICE. IT IS UNCLEAR WHERE HER POLITICAL LEANINGS LIE. THE APPOINTMENTS EXPAND THE HARARE HIGH COURT FROM 15 TO 19 JUSTICES. THE SIZE OF THE BULAWAYO HIGH COURT REMAINS UNCHANGED AT FOUR JUSTICES.

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2. (C) BRIAN RAFTOPOULOS, A RESEARCH FELLOW AT THE UNIVERSITY OF ZIMBABWE, TOLD THE EMBASSY THAT MUGABE'S APPOINTEES ARE INDEED CLOSE TO THE RULING PARTY, BUT NOT SO CLOSE THAT THEY CAN BE CALLED ZANU-PF PUPPETS. MUGABE WANTS CREDIBLE AND COMPETENT PEOPLE ON THE COURT, RAFTOPOULOS OFFERED, TO AT LEAST PRESERVE SOME APPEARANCE OF JUDICIAL INDEPENDENCE. HIGH COURT JUSTICESHIPS ARE NOT "STRAIGHTFORWARD PATRONAGE POSITIONS," THE RESEARCH FELLOW CONTINUED, BECAUSE JUSTICES EXERCISE A CONSIDERABLE AMOUNT OF AUTONOMY IN THEIR RULINGS. THE JUDICIAL SERVICE COMMISSION, HEADED BY THE STAUNCHLY INDEPENDENT SUPREME COURT CHIEF JUSTICE ANTHONY GUBBAY, HAD TO APPROVE THE NOMINEES, WHICH ALSO LENDS SOME CREDIBILITY TO THE APPOINTMENTS. (COMMENT: RECENTLY APPOINTED TO THE JUDICIAL SERVICE COMMISSION WERE TWO VERY PRO-ZANU-PF MEMBERS GODFREY CHIDIYASIKU--THE HIGH COURT JUDGE PRESIDENT--AND CANAAN DUBE. IN ANOTHER ATTEMPT AT VITIATING THE GATEKEEPER POINT OF THE JUDICIARY'S INDEPENDENCE, THE COMMISSION CONTRACT OF BOB

STUMBLES--OUR EMBASSY LAWYER, AND WIDELY RESPECTED IN THE LEGAL FIELD--WAS NOT RENEWED BY MUGABE. END COMMENT.) NONETHELESS, THE APPOINTMENTS REFLECT MUGABE'S ONGOING, LONG-TERM PLAN TO TURN THE JUDICIARY INTO AN ARM OF GOVERNMENT MORE PLIABLE TO ZANU-PF'S WISHES, RAFTOPOULOS BELIEVES.

13. (C) COMMENT: MUGABE'S EXPANSION OF THE HIGH COURT WITH JUSTICES HAVING STRONG TIES TO THE RULING PARTY UNDERMINES THE INDEPENDENCE OF THE JUDICIAL SYSTEM, IN OUR VIEW. RAFTOPOULOS IS CORRECT IN THAT THE NEW
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JUSTICES HAVE STRONG LEGAL CREDENTIALS, AND MUGABE'S ATTENTION TO THEIR CREDIBILITY SHOWS THAT THE PRESIDENT STILL CARES ABOUT MAINTAINING A FACADE OF LEGALITY FOR HIS PARTY'S ACTIONS. HOWEVER, THE JUDGE PRESIDENT OF THE HIGH COURT IS AN AFFIRMED ZANU-PF LOYALIST, AND, WITH A LARGER BENCH MORE AMENABLE TO HIS PARTY'S CAUSES, HE WILL HAVE MORE OPTIONS IN ASSIGNING CASES WHEN THEY COME BEFORE THE HIGH COURT. THE COURT HAS BEEN ESPECIALLY ACTIVE IN ADJUDICATING CLAIMS OF COMMERCIAL FARMERS DENIED DUE PROCESS IN THE SEIZURE OF THEIR LAND. MUCH OF THIS ACTIVISM, IN THE GOVERNMENT'S INTERPRETATION, COULD BE STOPPED COLD WHEN THE COURT RESUMES ITS SESSION NEXT MONTH. END COMMENT.

IRVING

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